

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review of a Decision of the)	
Universal Service Administrator by)	
)	
Lazo Technologies, Inc., <i>et al.</i>)	File Nos. SLD-360412, 360904, 360931,
)	369205, 369537
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

ORDER

Adopted: August 12, 2009**Released: August 12, 2009**

By the Acting Chief, Wireline Competition Bureau:

I. INTRODUCTION

1. In this order we deny a request for review filed by Lazo Technologies, Inc., Hill Professional Services, and Advanced Technology Solutions South (collectively, Petitioners).¹ Petitioners seek review of a decision by the Universal Service Administrative Company (USAC) denying payment for work Petitioners performed for the Dallas Independent School District (DISD) under the Commission's schools and libraries universal service support program, also known as the E-rate program.² USAC denied payment for the invoices at issue after concluding that the underlying contract for E-rate services violated the Commission's competitive bidding requirements and program rules.³ For the reasons set forth below, we affirm USAC's decision and deny Petitioners' request for review.

II. BACKGROUND**A. E-rate Program Rules and Requirements**

2. Under the E-rate program, eligible schools, libraries, and consortia that include eligible schools and libraries may apply for discounts for eligible telecommunications services, Internet access, and internal connections.⁴ The Commission's rules provide that an eligible school, library, or consortium

¹ Letter from Tom Lazo, Sr., Lazo Technologies, Eddie Hill, Hill Professional Services and Billy Ratcliff, Advanced Technology Solutions South, to Office of the Secretary, Federal Communications Commission, CC Docket No. 02-6 (filed May 11, 2009) (Request for Review). Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Universal Service Administrative Company (USAC) may seek review from the Commission. 47 C.F.R. § 54.719(c).

² Request for Review at 1-4.

³ See 47 C.F.R. § 54.504 (a)-(c).

⁴ 47 C.F.R. §§ 54.501-54.503.

that includes eligible schools and libraries must seek competitive bids for all services eligible for support and must comply with all applicable state and local competitive bidding requirements.⁵ To promote a fair and open competitive bidding process, the Commission adopted several requirements aimed at ensuring that all prospective bidders can identify the services sought by schools and libraries and that all such bidders have sufficient time to prepare and submit bids.⁶

3. In accordance with the Commission's competitive bidding rules, applicants submit for posting on USAC's website an FCC Form 470 requesting discounts for E-rate eligible services for which the applicant is seeking a new contract.⁷ The applicant must describe the desired services with sufficient specificity to enable potential service providers to submit bids for such services.⁸ The applicant must provide this description on its FCC Form 470 or indicate on the form that it has a Request for Proposal (RFP) available providing detail about the requested services.⁹ The RFP must be available to all potential bidders for the duration of the bidding process.¹⁰

4. After submitting an FCC Form 470, the applicant must wait 28 days before making commitments with the selected service providers.¹¹ The Commission's rules require that the applicant must carefully consider all bids submitted for provision of the requested services prior to entering into an agreement with the service provider.¹² The applicant must then submit a completed FCC Form 471 to notify USAC of the services that have been ordered, the service providers with which the applicant has entered into agreements, and an estimate of funds needed to cover the discounts to be given for eligible services.¹³

5. A fundamental requirement of the E-rate program is that solicitation for services be based on a fair and open competitive bidding process that is free from conflicts of interest.¹⁴ Pursuant to

⁵ 47 C.F.R. § 54.504. The Commission's rules provide one exception to the competitive bidding requirement for existing, binding contracts signed on or before July 10, 1997. See 47 C.F.R. § 54.511(c).

⁶ 47 C.F.R. §§ 54.504, 54.511; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd 8776, 9078-80, paras. 575-79 (*Universal Service First Report and Order*) (subsequent history omitted). These requirements are in addition to applicable state and local procurement rules. 47 C.F.R. § 54.504(a); *Universal Service First Report and Order*, 12 FCC Rcd at 9078-79, para. 575.

⁷ 47 C.F.R. § 54.504(b).

⁸ *Id.*

⁹ See *Schools and Libraries Universal Service, Description of Services Requested and Certification Form*, OMB 3060-0806 (September 1999) (FCC Form 470); *Schools and Libraries Universal Service, Description of Services Requested and Certification Form*, OMB 3060-0806 (October 2004) (FCC Form 470 currently in use).

¹⁰ FCC Form 470.

¹¹ 47 C.F.R. § 54.504(b).

¹² See 47 C.F.R. § 54.511(a); see also *Universal Service First Report and Order*, 12 FCC Rcd at 9029, para. 480 (finding that without competitive bidding requirements, the applicant may not receive the most cost-effective services).

¹³ 47 C.F.R. § 54.504(c). Pursuant to USAC's operating procedures, USAC performs a program integrity assurance (PIA) review to examine the applicants' FCC Forms 471 and other documentation to ensure that the discounts recipients seek are for eligible services, provided to eligible entities, and for eligible uses. See USAC website, PIA, <http://www.sl.universalservice.org/reference/6pia.asp> (last visited August 12, 2009).

¹⁴ See *Request for Review of Decisions of the Universal Service Administrator by MasterMind Internet Services, Inc.*, *Federal-State Joint Board on Universal Service*, SPIN-143006149, CC Docket No. 96-45, Order, 16 FCC Rcd 4028, 4032-33, para. 10 (2000) (*MasterMind Order*); see also *Request for Review of the Decision of the Universal Service Administrator by Ysleta Independent School District, El Paso, Texas, et al.*, *Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, SLD Nos.

its authority as the administrator of the E-rate program,¹⁵ USAC provides on its website guidelines and training materials that incorporate the Commission's rules and requirements for E-rate matters, including competitive bidding requirements.¹⁶ During the relevant time period for this appeal in 2002, USAC's website provided guidance for conducting an open and fair competitive bidding process, including the roles of applicants and service providers and their obligation to avoid prohibited conflicts of interest.¹⁷

B. The Request for Review

6. Petitioners were members of a consortium led by Micro Systems Engineering, Inc., also known as Micro Systems Enterprises, Inc. (MSE), (collectively, MSE Consortium) that submitted the winning bid to provide E-rate services to DISD for funding year 2003.¹⁸ On July 10, 2008, Frankie Wong, the co-owner and president of MSE and lead agent for the MSE Consortium, and Ruben Bohuchot, the former DISD Chief Technology Officer, were convicted of federal offenses in connection with their participation in a bribery and money laundering scheme involving the funding year 2003 E-rate contract for DISD.¹⁹ Evidence presented in the criminal proceeding indicated that Mr. Bohuchot tainted the bidding process by adjusting the requirements of DISD's RFP to assist Mr. Wong in securing the DISD contract for the MSE Consortium.²⁰ In exchange, Mr. Wong and MSE provided Mr. Bohuchot

321479, *et al.*, CC Docket Nos. 96-45, 97-21, Order, 18 FCC Rcd 26407, 26434, para. 60 (2003) (*Ysleta Order*); *Request for Review of Decisions of the Universal Service Administrator by SEND Technologies LLC, Schools and Libraries Universal Service Support Mechanism*, SPIN-143010002, CC Docket No. 02-6, Order, 22 FCC Rcd 4950, 4952-53, para. 6 (Wireline Comp. Bur. 2007) (*SEND Order*); *Request for Review of Decisions of the Universal Service Administrator by Caldwell Parish School District, et al., Schools and Libraries Universal Service Support Mechanism*, File Nos. SLD-289493, *et al.*, CC Docket No. 02-6, Order, 23 FCC Rcd 2784, 2790-92, paras. 16-18 (Wireline Comp. Bur. 2008) (*Caldwell Parish Order*).

¹⁵ See *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, Third Report and Order in CC Docket No. 97-21, Fourth Order on Reconsideration in CC Docket No. 97-21, and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058, 25064-65, para. 12 (1998). Although E-rate funding year 2003 is at issue in this appeal, the relevant competitive bidding process occurred in 2002. See *United States v. Ruben B. Bohuchot, et al.*, Criminal Docket No. 3:07-CR-167-L-1, L-2 at 5 (N.D. Tex. filed May 22, 2007, and entered May 24, 2007, under seal; unsealed May 29, 2007) (*Indictment*) (stating that the RFP was issued on December 17, 2002, and the contract between Micro Systems Engineering, Inc. (MSE) and DISD was signed on January 30, 2003). Hence, the relevant rules and guidelines for the instant appeal are from the 2002 timeframe.

¹⁶ See, e.g., USAC website, Step 3: Run an Open and Fair Competitive Bidding Process, <http://www.usac.org/sl/applicants/step03/run-open-fair-competition.aspx> (last visited August 12, 2009) (USAC Guidance, Open and Fair Competitive Bidding Process).

¹⁷ See, e.g., USAC website, USAC 2002 Training Materials, Program Compliance at 5-6, http://www.usac.org/_res/documents/sl/ppt/2002/15%20Program%20Compliance.ppt#429,1, PROGRAM COMPLIANCE Catriona Ayer and Ray Mendiola (last visited August 12, 2009) (USAC 2002 Training Materials).

¹⁸ An E-rate funding year runs from July 1 through June 30 of the following year. See 47 C.F.R. § 54.507 (b); http://www.usac.org/_res/documents/sl/pdf/E-rate-Overview.pdf.

¹⁹ See generally, *Indictment; United States v. Ruben B. Bohuchot*, Criminal Docket No. 3:07-CR-00167-L-1, Judgment (N.D. Tex. filed Nov. 14, 2008 and entered Nov. 17, 2008; amended Nov. 25, 2008); *United States v. Frankie Logyang Wong*, Criminal Docket No. 3:07-CR-00167-L-2, Judgment (N.D. Tex. Filed Nov. 14, 2008 and entered Nov. 17, 2008); see also *Former Dallas Independent School District (DISD) Executive and Houston Businessman Convicted in Federal Corruption Trial*, DOJ Press Release, July 10, 2008, http://www.usdoj.gov/usao/txn/PressRel08/bohuchot_wong_DISD_convict_pr.html (last visited August 12, 2009) (DOJ Bohuchot/Wong Press Release).

²⁰ *United States v. Ruben Bohuchot and Frankie Logyang Wong*; Criminal No. 3:07-CR-167-L Memorandum Opinion and Order at 5 (N.D. Tex. filed Nov. 10, 2008) (Texas Memorandum Opinion and Order); see also

with frequent meals, payment for numerous vacations and entertainment expenses, cash, and extensive use of two yachts purchased for the purpose of entertaining Mr. Bohuchot.²¹

7. On May 5, 2009, USAC advised the MSE Consortium that it was denying payment on funding request number (FRN) 1017129 because the bribery scheme between the MSE Consortium, through its agent, and DISD's agent violated the Commission's competitive bidding rules.²² USAC stated that such actions tainted the competitive bidding process that resulted in the contracts upon which the DISD's funding year 2003 FCC Form 471 relied.²³ The funding request included outstanding invoices for a cabling project performed by Petitioners pursuant to the contract between the MSE Consortium and DISD.²⁴ USAC paid approximately \$93 million to the MSE Consortium, and Petitioners received approximately \$17 million pursuant to the DISD contract.²⁵

8. On May 11, 2009, Petitioners filed a request for review appealing USAC's decision.²⁶ Petitioners seek payment for invoices totaling more than \$2.5 million for cabling work performed for DISD during funding year 2003.²⁷ Petitioners argue that they should be paid because: 1) they completed the cabling project pursuant to their contract with DISD; 2) they were never involved in any fraudulent activity; 3) other suppliers and contractors that were part of the MSE Consortium were paid in full; and 4) they were never notified by USAC or DISD to cease work.²⁸

III. DISCUSSION

9. We deny the request for review. Based on the record before us, we find that USAC properly denied Petitioners' request for payments. The contract between DISD and the MSE Consortium resulted from a bribery scheme that violated the Commission's competitive bidding rules and

Indictment at 8-9; Former Dallas Independent School District (DISD) Executive Sentenced to 11 Years in Federal Prison, DOJ Press Release, Nov. 12, 2008, http://www.usdoj.gov/usao/txn/PressRel08/bohuchot_DISD_sen_pr.html (last visited August 12, 2009) (DOJ Bohuchot Press Release); *Businessman Convicted in Dallas Independent School District (DISD) Corruption Case Sentenced to 10 Years in Federal Prison*, DOJ Press Release, Nov. 13, 2008, http://www.usdoj.gov/usao/txn/PressRel08/wong_DISD_sen_pr.html (last visited August 12, 2009) (DOJ Wong Press Release). MSE was able to obtain two contracts with DISD as a result of information that Mr. Wong received from Mr. Bohuchot. *Indictment at 2-6*. In this order, we only address the contract involving E-rate services.

²¹ See *Indictment at 8-9, 10-13, and 33*; DOJ Wong Press Release at 2. Consistent with the Commission's rules, Messrs. Bohuchot and Wong have been suspended from participating in the E-rate program and the Commission has initiated debarment proceedings against them. See Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Frankie Logyang Wong, Notice of Suspension and Initiation of Debarment Proceedings (dated Feb. 26, 2009); Letter from Hillary S. DeNigro, Chief, Investigations and Hearings Division, Enforcement Bureau, Federal Communications Commission, to Mr. Ruben B. Bohuchot, Notice of Suspension and Initiation of Debarment Proceedings (dated Feb. 26, 2009).

²² Letter from USAC, Schools and Libraries Division, to Stephanie M. Shaw-Green, Micro System Engineering (dated May 5, 2009).

²³ *Id.* at 4.

²⁴ Request for Review at 1.

²⁵ See E-mail from Tom Lazo, Lazo Technologies, to Jim Bird, Federal Communications Commission (dated Dec 12, 2008); E-mail from Eddie Hill, Hill Technologies, to Jim Bird, Federal Communications Commission (dated Dec. 3, 2008); E-mail from Dennis C. Ware, W&R Technology dba ATS South, to Jim Bird, Federal Communications Commission (dated Dec. 3, 2008).

²⁶ *Id.*

²⁷ *Id.* at 5-6.

²⁸ *Id.* at 2-4.

requirements. Accordingly, no providers performing work under that contract are entitled to receive funding under the E-rate program.²⁹

10. The MSE Consortium, through its lead agent, Mr. Wong, and DISD's lead agent, Mr. Bohuchot, engaged in conduct that violated the Commission's competitive bidding rules and requirements. Specifically, these individuals developed a relationship that permitted Mr. Wong to unfairly influence the outcome of the bidding process. Their conduct directly contravened the requirements that applicants must seek competitive bids for E-rate services and consider carefully all submitted bids.³⁰ To prevent an applicant from giving undue consideration to certain bids, service providers are prohibited from being involved in the competitive bidding process other than as a bidder.³¹ To ensure that the competitive bidding process enables schools and libraries to choose the best and most efficient provider of services, applicants should not have a relationship with a service provider prior to the competitive bidding process that would unfairly influence the outcome.³²

11. Evidence presented in the criminal proceeding established that Mr. Wong not only had interactions with Mr. Bohuchot prior to release of the RFP beginning the bidding process, but also engaged in misconduct to ensure that DISD awarded the E-rate contract to the MSE Consortium. For example, in May 2002, at least seven months prior to signing the contract with DISD, Mr. Bohuchot and his wife traveled to Key West, Florida at the expense of Mr. Wong and MSE.³³ In addition, evidence presented in the criminal proceeding revealed that Mr. Bohuchot adjusted the requirements for the E-rate RFP "in ways that benefited Wong and his companies."³⁴ Evidence presented indicated that Mr. Bohuchot provided information to Mr. Wong that enabled the MSE Consortium to submit the winning bid for the DISD E-rate contract.³⁵ In exchange for assistance in securing the DISD E-rate contract, Mr. Wong provided Mr. Bohuchot with numerous gifts and other benefits, including access to a sport-fishing yacht, entertainment expenses, and cash payments.³⁶ This conduct violated federal statutes and resulted in criminal convictions of Messrs. Wong and Bohuchot for which they are currently serving prison

²⁹ See 47 C.F.R. §§ 54.504, 54.511; compare *Request for Immediate Relief filed by the State of Tennessee, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, CC Docket Nos. 96-45, 97-21, 18 FCC Rcd 13581, 13587, para. 18 (2003) (*Tennessee Order*) (allowing the applicant to substitute service providers and receive funding based in part on a finding that there were no allegations of waste, fraud, abuse, or other wrongdoing relating to the award of the underlying contract).

³⁰ See 47 C.F.R. §§ 54.504, 54.511; see also *Ysleta Order*, 18 FCC Rcd at 26411, para. 9 (citing *Universal Service First Report and Order*, 12 FCC Rcd 9029-30, para. 481).

³¹ See *MasterMind Order*, 16 FCC Rcd at 4032-33, para. 10; see also USAC 2002 Training Materials at 5.

³² See *MasterMind Order*, 16 FCC Rcd at 4032-33, para. 10-12 (holding that when an applicant surrenders control of the bidding process to an employee of an entity that will also participate in the bidding process as a prospective service provider, the applicant irreparably impairs its ability to hold a fair and open competitive bidding process); *Ysleta Order*, 18 FCC Rcd at 26434, para. 60 (finding that direct involvement in an application process by a service provider thwarts the competitive bidding process); *SEND Order*, 22 FCC Rcd at 4952-53, para. 6 (finding a conflict of interest where the applicant's designated contact person on its FCC Form 470 owned a fifteen percent interest in the service provider); *Caldwell Parish Order*, 23 FCC Rcd at 2791, para. 17 (finding that service provider involvement in the bidding process could cause the applicant to look more favorably on the service provider's bid in violation of the competitive bidding rules); see also USAC E-Rate Service Provider Manual, Chapter 5 (available on USAC's website August 16, 2001 through June 7, 2003).

³³ See DOJ Bohuchot/Wong Press Release; *Indictment* at 2; DOJ Bohuchot Press Release at 2.

³⁴ See Texas Memorandum Opinion and Order at 5.

³⁵ See DOJ Bohuchot/Wong Press Release.

³⁶ See DOJ Bohuchot/Wong Press Release; *Indictment* at 2; DOJ Bohuchot Press Release at 2.

sentences of 10 and 11 years, respectively.³⁷ The bribery scheme between Messrs. Wong and Bohuchot also established a conflict of interest and a pattern of conduct that unfairly influenced the outcome of the competitive bidding process for the DISD E-rate contract. Their conduct violated the Commission's rules and requirements and tainted the E-rate contract between DISD and the MSE Consortium. Specifically, this conduct resulted in a violation of the requirements that all bids submitted are carefully considered.³⁸

12. We reject Petitioners' arguments that they should be paid because they completed their work and were not involved in any wrongdoing.³⁹ Petitioners' work performance and conduct are not dispositive of the question of whether Petitioners are entitled to the E-rate funding at issue. As discussed above, the contract between DISD and the MSE Consortium was awarded outside of a fair and open competitive bidding process in violation of the Commission's rules and requirements, and the parties to that contract are therefore not entitled to any E-rate funding.⁴⁰ In addition, we are not persuaded by Petitioners' argument that they should be paid because USAC has paid other suppliers and service providers that were part of the MSE Consortium.⁴¹ To preserve the integrity of the E-rate program and protect the program against waste, fraud and abuse, the Commission's rules require USAC to recover the full amount disbursed for any funding requests in which the beneficiary has failed to comply with the Commission's competitive bidding requirements.⁴² Therefore, to the extent that any MSE Consortium members were paid under the E-rate contract at issue, the Commission's rules require USAC to recover those funds.

13. We also reject the argument that Petitioners should be paid because USAC failed to provide notice that funding was in jeopardy due to the criminal investigation.⁴³ As part of its ongoing activities to protect against waste, fraud and abuse, USAC defers action on funding commitments for any funding request when it is aware of an active law enforcement investigation directly related to that funding request.⁴⁴ USAC does not notify parties that an application may be on hold, in order to avoid jeopardizing non-public investigations.⁴⁵ In any event, in this case, based on publicly available information regarding the investigation, Petitioners had reason to know that USAC was likely to hold or deny funding for the DISD applications at issue. In the summer of 2005, there were numerous media reports about the federal investigation of DISD and MSE, and these reports included the fact that USAC

³⁷ See DOJ Wong Press Release.

³⁸ See *supra* note 30.

³⁹ Request for Review at 2-4.

⁴⁰ 47 C.F.R. §§ 54.504, 54.511; *MasterMind Order*, 16 FCC Rcd at 4032-35, paras. 9-14 (E-rate funding properly denied due to competitive bidding violations); see also *Ysleta Order*, 18 FCC Rcd at 26408-09, paras. 1-4 (USAC properly denied funding due to competitive bidding violations); cf. *Tennessee Order*, 18 FCC Rcd at 13587, para. 18 (relief is appropriate only where there were "no allegations of waste, fraud, abuse, or other wrongdoing relating to ...the award of the specific [] contract itself").

⁴¹ Request for Review at 2-4.

⁴² *Schools and Libraries Universal Service Support Mechanism*, CC Docket 02-6, Fifth Report and Order, 19 FCC Rcd 15808, 15814-16, paras. 18-21 (2004).

⁴³ Request for Review at 3-4.

⁴⁴ See USAC website, Principles for Treating Entities Under Investigation, <http://www.usac.org/sl/tools/reference/principles-for-treating-entities.aspx> (last visited August 12, 1009) (USAC Principles for Treating Entities Under Investigation).

⁴⁵ *Tennessee Order*, 18 FCC Rcd at 13583, para. 8.

had frozen E-rate payments.⁴⁶ In addition, Petitioners admit that USAC stopped E-rate payments on the DISD contract on August 12, 2005, based on reports by the Dallas Morning News.⁴⁷ As stated above, USAC's website clearly states that USAC will defer funding for entities under investigation.⁴⁸

14. For the reasons discussed above, we conclude that USAC was correct in its decision to deny payments to Petitioners because DISD and the MSE Consortium, through its lead agent, violated the Commission's competitive bidding rules and requirements. Accordingly, we affirm USAC's decision to deny payment of Petitioners' outstanding invoices and we deny Petitioners' request for review.

IV. ORDERING CLAUSES

15. IT IS ORDERED, pursuant to the authority contained in sections 1-4 and 254 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151-154 and 254, and sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the request for review filed by Lazo Technologies, Inc., Hill Professional Services, and Advanced Technology Solutions South IS DENIED.

16. IT IS FURTHER ORDERED that, pursuant to section 1.102(b)(1) of the Commission's rules, 47 C.F.R. §1.102(b)(1), this order SHALL BE EFFECTIVE upon release.

FEDERAL COMMUNICATIONS COMMISSION

Julie A. Veach
Acting Chief
Wireline Competition Bureau

⁴⁶ See, e.g., *DISD Vendor's Funding Frozen*, redOrbit, Aug. 24, 2005, http://www.redorbit.com/news/education/218123/disd_vendors_funding_frozen/ (last visited August 12, 2009); *Helping to Land the Big One?*, Dallas Morning News, Jul. 24, 2005, <http://www.ewa.org/docs/dsmseries.pdf> (last visited August 12, 2009); *Dallas Administrators Investigate Official's Trips on Vendor's Boat*, Education Week, Aug. 10, 2005 <http://www.edweek.org/ew/articles/2005/08/10/44brief-5.h24.html?tkn=RXZFFVx1zHeglyhtN7niu7XpFSvHUoyQR0vfH> (last visited August 12, 2009).

⁴⁷ Request for Review at 3.

⁴⁸ See USAC Principles for Treating Entities Under Investigation.